

ENFORCEMENT OUTCOME

Disqualification – Mrs Hemavadi Poolay Soondram

Ref: ENF/30L2020/E2

1. Background

- 1.1. Hemavadi Poolay Soondram (“Mrs Soondram”), has been the director of Beaufort Management Services Ltd (the “Company”), which holds a Management Licence issued by the Financial Services Commission (the “FSC”) since 07 December 2010. She also holds 75% of the shares in the Company.
- 1.2. According to an Indictment dated 28 February 2018, the Company and its General Manager, namely Mr Arvinsingh Canaye (“Mr. Canaye”), have been, *inter alia*, charged with conspiracy to commit securities fraud, money laundering conspiracy and conspiracy to defraud the United States of America. These events occurred from July 2017 to January 2018, while she held position as director of the Company.
- 1.3. The Company’s Management Licence was suspended by the FSC with effect from 02 March 2018 and an investigation (the “Investigation”) was launched into the Company’s business.
- 1.4. On 16 July 2020, she was given written notice by the FSC of its intention to refer the matter to the EC and she has been given the opportunity to make written representations on the matter. She made written representations to the FSC by letter dated 03 August 2020.

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1.5. This matter was subsequently referred to the Enforcement Committee (the “EC”) by the Chief Executive of the FSC in accordance with section 53(1) of the Financial Services Act (the “FSA”) for such action as it deems appropriate.

2. Breaches committed by the Company

2.1. The Investigation revealed that, during her tenure in office as director, the Company has:

2.1.1. Facilitated the setting up of six (6) companies on behalf of an undercover agent posing as an associate of a Belizean confidential source while intentionally concealing the beneficial ownership of these companies;

2.1.2. Breached the FSA, the Financial Intelligence and Anti-Money Laundering Act (the “FIAMLA”) and the FSC Code on the Prevention of Money Laundering and Terrorist Financing (the “Code”). These contraventions are detailed below:

2.2. Concealing the true beneficial ownership in relation to six (6) companies

2.2.1. The EC has noted that:

2.2.1.1. Mr Canaye, while submitting applications to the FSC, concealed the true beneficial ownership in relation to six (6) companies, namely [**Names of companies edited for Confidentiality**].

2.2.1.2. The six companies were set up for the purpose of helping others to commit a financial crime.

2.2.1.3. As Money Laundering Reporting Officer (“MLRO”) of the Company, Mr Canaye failed to file a suspicious transaction report with the Financial Intelligence Unit, thereby breaching section 14 of the FIAMLA and paragraph 6.4 of the Code;

2.2.1.4. The above has been confirmed in Mr Canaye's Transcript of Criminal Cause for Pleading (the "Plea Agreement") dated 26 July 2018 wherein he stated that: *"...in mid to late 2017, I agreed with others to create a fraud company in Mauritius. My purpose in agreeing to create the offshore companies was to help others conceal their ownership interest in certain stock and to help them conceal the sources of money that I understood was going to be paid to United States-based stockbrokers to manipulate the value of certain securities. In connection with this agreement, I created documentation for six offshore corporations in December 2017. I made this agreement knowingly and intentionally."*

2.2.2. The EC has further observed that following the appointment of Mr. Canaye as General Manager of the Company, all decisions pertaining to its operations were centralised at his level. He was the sole decision-maker regarding the on-boarding of clients. In this regard, a review of the files of the six companies has revealed that the incorporation and FSC-related application have been undertaken solely by Mr Canaye.

2.3. Inadequate internal controls

2.3.1. On 3 October 2017, an invoice was issued by the Company to Company E for an amount of USD 43,200 representing fees relating to the incorporation of the six (6) abovementioned entities. Payment, received on 11 October 2017, was made by Company LS instead of Company E and the rationale/details for such payment could not be ascertained during the Investigation. On 11 December 2017, a further amount of USD 21,600 was received from Company LS. The Company did not undertake any customer due diligence measures on Company LS or ascertain the connection with Company E. Consequently, the Company could not explain the reasons why payments emanated from Company LS instead of Company E.

2.3.2. The Company, having failed to implement a sound internal control system, has been acting in breach of paragraph 3.1 of the Code. These inadequate internal systems

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and controls of the Company have been abused to facilitated the setting up of the six companies on behalf of the undercover agent.

2.4. Customer Due Diligence (“CDD”) Measures

2.4.1. The Company did not apply appropriate CDD measures on its clients thus acting in breach of paragraphs 4.1 and 9.1 of the Code.

2.4.2. The Investigation has revealed that the identity of ultimate beneficial owners of some of its clients were not ascertained by the Company. For instance, in one case, a file review has shown that the Company did not identify the ultimate beneficial owner.

2.4.3. In addition, relating to payments received by the Company, the Investigation revealed that the latter did not enquire into the source of the following funds:

2.4.3.1. An invoice was raised by the Company to Mr L on 22 November 2016 for an amount of EUR 641.52. Representatives of the Company could not explain during the Investigation why such invoice was raised and they could not confirm whether Mr L was a client of the Company;

2.4.3.2. On 21 November 2016 and 05 December 2016, telegraphic transfers of EUR 35, 000 and USD 4, 305.57 from Mr L were made to Hill Circle Consulting. On 9 December 2016, an additional amount of EUR 12,500 was paid to Hill Circle Consulting. No CDD checks were conducted by the Company on Hill Circle Consulting. The Investigation thereafter revealed that Hill Circle Consulting is wholly owned by Mr Canaye; and

2.4.3.3. On 19 December 2017, payment of USD 15,000 representing commission for introducing new clients, was made to Mr J. However, no CDD was available on Mr J.

2.4.4. It was further noted that the Company failed to conduct appropriate CDD measures in the case of Company J, one of its clients. In the file of this client, a fake passport of the shareholder/beneficial owner was uncovered during the Investigation.

2.5. Source of Funds/Source of Wealth

The Company acted in breach of paragraph 4.2 of the Code inasmuch as it did not have appropriate measures to verify the source of funds of its clients and merely relied on submissions made by its clients.

2.6. Certification of CDD Documents

The Company acted in breach of paragraph 4.3 of the Code inasmuch as customer due diligence documents reviewed during the Investigation were not appropriately certified. On several client files, no details on the certifier were available and there was no indication as to whether any employee of the Company had met the client face-to-face or whether the Company had access to the originals of identity documentation.

2.7. Ongoing Monitoring

2.7.1. The Company acted in breach of paragraph 4.1 of the Code since the files reviewed during the Investigation indicated that the Company failed to conduct ongoing monitoring on its clients.

2.7.2. The following illustrate some Investigation findings:

- Passport(s) were expired;
- Transactions of significant amounts took place without any CDD checks or any records regarding the rationale for these transactions;
- Risk rating was not systematically undertaken by the Company; and
- Sources of funds of clients were not established.

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- 2.7.3. The Company did not monitor the business relationship with its customers to ensure that it is consistent with the nature of the customers' business. In light of the Investigation findings, it has been noted that some of the Company's clients held licences from the FSC to conduct a specific activity. However, file reviews showed that the entities were involved in other activities.
- 2.7.4. In the case of Company I, Mrs Soondram has not been able to explain the rationale behind the complex structures. . Regarding Company S and Company P, she was unaware of the purpose of the transfers of funds. This represents a breach of paragraphs 6.1 and 6.2 of the Code.

2.8. Politically Exposed Persons ("PEPs")

The file reviews of the six related Global Business Companies ("GBCs") mentioned above revealed that the beneficial owner was categorized as a PEP. However, during the interview of Mrs Soondram under oath she stated that the Company does not have any PEP as client. Moreover, following the review of the Company's Anti-Money Laundering/Combating the Financing of Terrorism ("AML/CFT") Manual, it was noted that the Company does not have a clear policy on the acceptance of business relationships with PEPs. Approval of senior management prior to establishing business relationships with the client was not obtained. This represents a breach of paragraph 5.3.1 of the Code.

2.9. High Risk Relationship

The EC noted that in the case of Company C, the beneficial owner was previously the Vice President of Company EM, a company found guilty of the biggest fraudulent scheme in the history of British Columbia history. However, there was no evidence of enhanced due diligence measures having been taken by the Company, amounting to a breach of paragraph 5.2 of the Code.

2.10. Record Keeping

The Company failed to ensure that all business transactions were carried and recorded fairly and accurately. Following clients' file review, the EC noted that in several instances accounting records, bank statements, and agreements were not available. In other cases, the nature of transaction could not be determined due to the non-availability of records. This represents a breach of section 29 of the FSA and paragraph 8 of the Code.

2.11. Business Introducers/Eligible Introducer

2.11.1. Some clients had been referred to the Company by Messrs J and S (the 'Introducers') namely Company S, Company P and Company T. The Investigation revealed that the Company exclusive placed reliance on the Introducers for the CDD checks on these entities. All such CDD documents and bank statements were maintained by the Introducers. In addition, the instructions for banking transactions were also received from the Introducers instead of the clients and Mr J had viewing access on the entities' bank accounts.

2.11.2. However, the EC observed that there was no evidence to demonstrate that the Company had carried out appropriate due diligence on the Introducers thereby breaching paragraph 4.4 of the Code.

2.12. Deficiencies in GBCs under the management of the Company

2.12.1. The EC observed that a sample of files in which deficiencies were highlighted in the FSC's onsite inspection report 2015 was reviewed during the Investigation. It was concluded that the deficiencies had not been addressed by the Company.

2.12.2. Other breaches observed during the Investigation include:

2.12.2.1. The Company failed to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is

capable of being used by a person to commit or to facilitate the commission of a money laundering offence. This represents a breach of section 3(2) of the FIAMLA;

2.12.2.2. The Company failed to ensure that officers acting on its behalf comply with the Code of Conduct and that the practices followed are in conformity with the Guiding Principles as set out in the Code in so far as the Company failed to:

- ensure that all business transactions were carried out and recorded fairly and accurately;
- manage its business in a responsible and sustainable manner while ensuring that adequate controls were maintained; and
- ensure that proper systems and procedures were in place in respect of operations, record keeping, human resources, training and compliance.

3. Proceedings of the EC

3.1. In view of the fact that the abovementioned breaches have occurred during her tenure in office as director, the EC formed the opinion that she no longer meets the fit and proper person requirements to hold position as officer in any licensee of the FSC.

3.2. The EC issued a notice dated 11 November 2020 to her pursuant to section 53(2) of the FSA. The purpose of the notice was to inform her that:

3.3. The EC was contemplating to disqualify her from holding position as officer in any licensee of the FSC for a period not exceeding nine (9) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA.; and

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- 3.4. She is entitled, as of right, to make written representations to the EC within a period of 21 days from the notice as to why she should not be subject to the abovementioned sanction.
- 3.5. All the referral materials provided by the FSC were communicated to her along with the notice dated 11 November 2020.
- 3.6. She made written representations to the EC by way of letter dated 30 November 2020 wherein she disputed that the abovementioned contraventions, which have been committed during her tenure in office as director, impinge on her fitness and propriety to hold position as officer in a licensee of the FSC. She has maintained that she has not breached her duty of care, skill and diligence as director, which, based on her submissions, she claim having, at all times, performed in good faith.

4. Decision of the EC

- 4.1. Following careful consideration of her written representations, the EC has concluded that she no longer meets the fit and proper person requirements to hold position as officer in any licensee of the FSC inasmuch as she has been unable to perform her relevant functions as director of the Company properly and efficiently as required under section 20(1)(a)(iii) of the FSA. This has resulted in the Company being used to commit the abovementioned breaches and unsound business conduct.
- 4.2. The EC has consequently disqualified her from holding position as officer in any licensee of the FSC for a period of nine (9) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA.
- 4.3. This decision shall take effect immediately after a period of 21 days from the date of this decision notice.

5. Application to the Financial Services Review Panel (the “FSRP”)

Mrs Soondram may make an application to the FSRP for a review of the above decision of the EC, within 21 days from the issue of the notice. Such an application must be made by registered post, specifying the reasons for the review, in accordance with section 53(4) of the FSA. A copy of the application must be sent, by registered post, to the FSC.

30 December 2020

This published version of the Decision Notice has been edited for formatting purposes and to remove certain confidential, sensitive or personal information.

The person to whom the decision in this Notice relates may exercise the right to seek a review by the FSRP. Any amendment, cancellation or further update pertaining to the exercise of the aforementioned right in relation to the decision in this Notice will be communicated at the appropriate time.